LBP Las Vegas, NV

## UNITED STATES OF AMERICA

### BEFORE THE NATIONAL LABOR RELATIONS BOARD

HARD ROCK HOLDINGS LLC d/b/a HARD ROCK HOTEL AND CASINO Employer

and Case 28-RC-6680

INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 995 Petitioner

#### DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to and determinative challenges in an election held November 6, 2009, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 17 for and 9 against the Petitioner, with 8 challenged ballots, a sufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings<sup>1</sup> and recommendations,<sup>2</sup> and finds that a certification of representative should be issued.

<sup>&</sup>lt;sup>1</sup> The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

# The Application of the Caesars Tahoe test

The hearing officer's recommendation to sustain the Union's challenges to the ballots of eight bell desk employees, who are "dual-rated" to work outside the bell desk department, was based on his finding, under the first prong of the Board's threepronged test in Caesars Tahoe, 337 NLRB 1096, 1097 (2002), that the Stipulated Election Agreement unambiguously excludes those employees from the unit. The parties vigorously debate that question. The Employer contends that the unit description "speaks of duties, not job titles or classifications" and that, accordingly, the phrase "Valet Parking employees" should be read to include all employees who perform valet parking work, including these dual-rated employees who perform such work on occasion. On the other hand, the Union contends that the phrase "Valet Parking employees" describes a category of employees that includes the three job classifications of employees in the valet department ("lead attendant," "full-time attendant," and "on-call attendant"), not the duties performed by those employees. We find that the Stipulated Election Agreement is amenable to either interpretation and. accordingly, that the phrase "Valet Parking employees" does not clearly refer to either a job category or job duties. Accordingly, we find, contrary to the hearing officer, that the unit description is ambiguous with respect to the dual-rated employees.

Because we find that the first prong of the *Caesars Tahoe* test does not resolve the issue, we proceed to the second prong of the *Caesars Tahoe* test: an examination of the parties' intent through normal methods of contract interpretation, including the

<sup>&</sup>lt;sup>2</sup> In the absence of exceptions, we adopt *pro forma* the hearing officer's recommendations to overrule the Employer's Objections 1, 3, and 5. We further adopt the hearing officer's analysis of and recommendations to overrule the Employer's Objections 2, 4, and 6.

examination of extrinsic evidence. For the reasons set forth in the hearing officer's report, we adopt his finding that the extrinsic evidence does not conclusively establish whether the parties agreed to include the dual-rated employees in the unit.

Finally, because the intent of the parties still cannot be discerned, we proceed to the third prong of the *Caesars Tahoe* test: a determination of the bargaining unit by means of our standard community-of-interest analysis. We adopt the hearing officer's finding that the dual-rated employees do not share a community of interest with the unit employees based on the evidence demonstrating that: (1) none of the four dual-rated employees who testified at the hearing had worked as a valet with any consistency, and only one of them had worked "more than a handful" of days as a valet during the 3 months preceding the election; (2) the four employees who testified could not recall any of the other four dual-rated employees working in the valet department more recently than 2 months before the election; and (3) employees in the bell desk department, including the dual-rated employees, work independently of – and are supervised separately from – valet employees, and they do not share in the same tip pool except when they are assigned to the valet department for an entire shift.<sup>3</sup>

Accordingly, we agree with the hearing officer that the eight dual-rated employees do not belong in the unit. Therefore, the challenges to their ballots were properly sustained.

<sup>&</sup>lt;sup>3</sup> In adopting the hearing officer's finding that the dual-rated employees lack a community of interest with the unit, we do not rely on his citation of *Harold J. Becker Co.*, 343 NLRB 51, 52 (2004).

## CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for International Brotherhood of Teamsters Local 995 and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and part-time Valet Parking employees employed by the Employer at 4455 Paradise Road, Las Vegas, Nevada, excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

Dated, Washington, D.C.,	September	28, 2010.	
		Wilma B. Liebman,	Chairman
		Craig Becker,	Member
•		Mark Gaston Pearce,	Member
(SEAL)		NATIONAL LABOR RELATIONS BOARD	